

Administration, ~~Termination, and Close~~ Out of Contingency Contracts



Lesson Objectives

1. Describe the responsibilities of the **personnel** involved in contingency **contract administration** and the training each requires to adequately perform contract administration functions.
2. Compare and contrast the types of **contract modifications** which are used in contingency contracting and their affect on timely performance.

Lesson Objectives

3. Explain the procedures used to **transfer open contracts** and orders to other contracting offices and agencies.
4. Explain the typical sources of **unauthorized commitments** and **undefinitized actions**, and demonstrate the proper **procedures for ratification and definitization**.

Lesson Objectives

5. Discuss the typical reasons for contractor **submission of claims** and the difficulties associated with obtaining sufficient documentation for negotiation and settlement of modifications, claims, and disputes.
6. Assess a disputed contract claim and develop a position to **resolve the claim**.

Lesson Objectives

7. Discuss the mechanisms and procedures used in **monitoring contracting personnel** and maintaining adequate and required documentation of contracting actions.
8. Explain and demonstrate **how to close out contracts**, purchase orders, and other contractual instruments.

Lesson Objectives

9. Discuss and apply judgmental, ethical, and environmental considerations in terminating and closing out contracts.
10. Discuss procedures for administering and closing out contingency contracts.

Administrative Duties:

~~CCO~~

- Requirements of FAR 42.302
- Ratifying unauthorized commitments
- Definitizing unpriced actions
- Negotiating contract modifications
- Monitoring contracting support personnel



Administrative Duties

Support Personnel

■ Ordering Officer

- Maintaining SF 44s and submitting monthly summary report
- Maintaining record of purchases
- Maintaining record of available funds

■ Paying Agent

- Strict accounting of funds
- Register of transactions



Administrative Duties

Support Personnel

- Imprest Fund Cashiers
 - Running balance sheet
 - Maintain files of forms documenting expenditure and receipt of funds
- CORs and QAEs
 - Ensure contractor compliance with terms of contract
 - Document conformance and/or nonconformance



Contract Modifications

FAR 43.101 Definitions

■ Bilateral Actions

- Supplemental Agreement
- Definitization

■ Unilateral Actions

- Administrative Change
- Change Order
- Termination Notice



Definitized vs Undefined Mods

- Forward priced bilateral agreement is preferred
- Urgency and uncertainty of requirements does not always allow
- DFARS 217.74 provide guidance for definitiz



Definitizing Unpriced ~~Actions~~

- DFARS 217.74 requirements apply when purchase price exceeds SAT
- HCA approval required prior to entering into an unpriced contract action (UCA)
- Establish not-to-exceed amount when entering UCA
- Must definitize before expending 50% of NTE amount

Out of Scope Modifications

- Loosely-worded contract does not mean more items can be considered “within the general scope” of the contract
- Arise due to fluctuating requirements
- Not allowed unless they are bilateral
- Require Justification & Approval
- Typically require approval at CCO level - based on dollar value



Practical Exercise

Out-Of-Scope Modification



Ratifying Unauthorized ~~Commitments~~

- Actions by government personnel can result in a “constructive change”
 - Directing particular method of performance
 - Late or defective GFE/GFM
 - Requiring higher quality than specified
 - Failure to approve time extensions
- FAR 1.602-3 policy and limitation
- Nonratifiable commitments require submission of claim for GAO review



Practical Exercise

Ratification of Unauthorized Commitment



Transfer of Contract

- Required because of:
 - Redeployment / follow-on
 - Transfer of mission
 - DCMA assignment
- T4C and new award vs trans
- Account for Gov't and KTR property
- FAR 42.202: Transfer by Letter of Delegation / issue a unilateral mod
- Consider the business environment



Practical Exercise

Transfer Of Contract Administration



Termination

Judgmental Considerations

- FAR 49 provides policy and procedures
- Consider cultural, political, and business practice differences
- Transition from hostile environment



Termination of Commercial Contracts

- Termination for Convenience
 - Favors the Contractor when compared to a FAR Part 49 T4C
- Termination for Cause
 - Favors the Government when compared to FAR Part 49.4 T4D
- Practical Implications for the CCO

~~Ethical Considerations~~

Close-outs and Terminations

- Command pressure to quickly reduce “footprint” and send troops home
- “Fair and just” versus “legally sufficient”
- Clean up after yourself
- Gifts and gratuities upon departure

Environmental Considerations

- Proper disposal of hazardous materials
- Compliance with local / OCONUS requirements
- Expectation of compliance with



Practical Exercise

Termination And Settlement



Contract Claims

- Definition - FAR 33.201
- Contingencies are ripe with conditions which increase the likelihood of claims
 - Constructive changes
 - Rapid acquisition procedures
 - Lack of sufficient documentation
 - Differing business practices
 - Wide variance between anticipated and actual requirements

Non-Contract Claims

- Personnel Claims Act (31 USC 3721)
- Military Claims Act (10 USC 2733)
- Foreign Claims Act (10 USC 2734)
- SOFA Claims
- UCMJ Article 139 Claims (10 USC 939)
- Combat Claims
- Requisitions under the International Law of War

Settlement of Claims

- Establishing negotiation position:
 - Documentation and record keeping
 - Monitoring contractors and CORs
- Cost accounting principles often much more lax than found in the US
- FAR 33.2 policy and authority
- Expect to face difficulty obtaining sufficient documentation

Record Keeping

- Basic requirements spelled out in FAR 4.8 and DFARS 204.8
- J&As and D&Fs
- Modifications and claims
 - Cost data
 - Documentation of performance
- Transfers and terminations
 - FAR 4.804
 - DFARS 204.804



Closeout Requirements

Beyond Contract Files

- Ordering officer accounts
 - Original appointment order
 - Completed forms, documents, reports
 - PIIN logs
 - Unused forms
- Coordinate with J-1/AG - ensure ordering officers, imprest fund cashiers, CORs do not leave theater without C clearance



Practical Exercise

Contract Closeout



After Action Reports

- JULLS reports will be required both during and after the operation
- AARs will be required at the conclusion of the operation
- The end of the contingency is not the time to begin preparing these documents

Summary

- Initiation and award of contracts meets time demands, but proper contract administration satisfies customers
- Extensive effort required to administer and closeout contracts properly
- Consider issues requiring judgment, cultural, ethical, and environmental issues ensures smooth flow from award to closeout